

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

ERICK R. SMITH,

Plaintiff,

v.

GEMCAP TRUCKING, INC.; PRIME
PROPERTY & CASUALTY
INSURANCE INC.; HUMBERTO
JIMENEZ, Individually; and JOHN
DOES 1-3,

Defendants.

CIVIL ACTION FILE
NO. CV 421-242

NOTICE OF REMOVAL

COME NOW defendants Gemcap Trucking, Inc. ("Gemcap"), Prime Property & Casualty Insurance Inc. ("Prime"), and Humberto Jimenez and, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this notice of removal within the time prescribed by law, showing the Court as follows:

1.

On July 29, 2021, plaintiff Erick R. Smith filed a complaint in the State Court of Bryan County, Georgia, Civil Action File No. STSV2021000148. Bryan County is within the Savannah Division of the Southern District of Georgia.

2.

This notice of removal is filed within the time period prescribed by 28 U.S.C. § 1446(3).

3.

A true and correct copy of all remaining process, pleadings, and orders filed in connection with this action is attached hereto as Exhibit A. Defendants have no knowledge of any other process, pleadings, or orders filed or served in connection with this action, other than those attached hereto.

4.

This Court has original jurisdiction over the above-referenced case under 28 U.S.C. § 1332.

5.

There is complete diversity among the parties.

6.

Plaintiff is a citizen of North Carolina. (Compl. ¶ 6.)

7.

Gemcap is incorporated in Florida and has its principal place of business in Florida. (Compl. ¶ 1.) Accordingly, it is a citizen of Florida for purposes of diversity jurisdiction. 28 U.S.C. § 1332(c)(1).

8.

At the time of the subject accident, Jimenez resided at 5755 W 20th Avenue, Hialeah, Florida 33012 (Compl. ¶ 3.); he currently resides at 1885 W 56th Street, Unit 405 Hialeah, Florida 33012. Accordingly, Jimenez is a citizen of Florida for purposes of diversity jurisdiction.

9.

Prime is a foreign insurance company existing under the laws of Illinois and has its principal place of business in Utah. (Compl. ¶ 2.) Accordingly, it is a citizen of Illinois and Utah for purposes of diversity jurisdiction. 28 U.S.C. § 1332(c)(1).

10.

Defendants make a plausible allegation that plaintiff is seeking recovery in an amount in excess of \$75,000, exclusive of interest and costs. *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 135 S. Ct. 547, 554 (2014). Specifically, plaintiff seeks general damages for alleged physical and mental pain and suffering and special damages for alleged medical expenses. (Compl. ¶¶ 34, 35.) On August 18, 2020, plaintiff made a demand to compromise and settle his claim in exchange for payment of the sum of \$150,000. A true and correct copy of the demand letter is attached hereto as Exhibit B.

11.

The undersigned has read this notice of removal, and to the best of the undersigned's knowledge, information, and belief, formed after reasonable inquiry, it is well-grounded in fact, is warranted by existing law, and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

WHEREFORE, this notice of removal having been filed, said action shall proceed in the United States District Court for the Southern District of Georgia, Savannah Division, and no further proceedings shall be held in said case in the State Court of Bryan County.

STONE KALFUS LLP

/s/ Matthew P. Stone

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *Notice of Removal* to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel and parties of record who are CM/ECF participants and mailed by United States Postal Service, first-class, postage prepaid, a paper copy of the same document to counsel and parties of record as follows:

Thomas J. Ashenden, Esq.
Gary Powell, Esq.
Ashenden & Associates, P.C.
6111 Peachtree Dunwoody Road
Building D, Suite 100
Atlanta, GA 30328

This 26th day of August, 2021.

/s/ Matthew P. Stone

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